

Exhibit 6

FILED 07/18/2008 Page 2 of 14
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FILED IN THE
 UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

AUG 05 2004

at 2 o'clock and 25 min. P.M.
 WALTER A.Y.H. CHINN. CLERK

Attorneys for Defendants
FLEMING COMPANIES, INC.,
C&S LOGISTICS OF HAWAII, LLC,
C&S WHOLESALE GROCERS, INC.,
 and **C&S ACQUISITIONS, LLC**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;

Plaintiff,

vs.

HAWAIIAN EXPRESS SERVICE,
INC., a California corporation; H.E.S.
TRANSPORTATION SERVICES, INC.,
a California corporation; CALIFORNIA
PACIFIC CONSOLIDATORS, INC., a
California corporation; JEFFREY P.
GRAHAM and PETER SCHAUL,
California citizens; MARK DILLON and
TERESA NOA, BRIAN
CHRISTENSEN, Hawaii citizens;
(CAPTION CONTINUED)

) CIVIL NO. CV03-00385 SOM LEK
) (Copyright)
)
) **FLEMING COMPANIES, INC., C&S**
) **LOGISTICS OF HAWAII, LLC, C&S**
) **WHOLESALE GROCERS, INC., and**
) **C&S ACQUISITIONS, LLC'S**
) **AMENDED ANSWER TO SECOND**
) **AMENDED COMPLAINT FILED**
) **JUNE 18, 2004, FILED JULY 16, 2004;**
) **CERTIFICATE OF SERVICE**

FLEMING COMPANIES, INC., an
 Oklahoma corporation; C&S
 LOGISTICS OF HAWAII, LLC, a
 Delaware LLC; C&S WHOLESALE
 GROCERS, INC., a Vermont
 corporation; C&S ACQUISITIONS,
 LLC; FOODLAND SUPER MARKET,
 LIMITED, a Hawaii corporation;
 HAWAII TRANSFER COMPANY,
 LIMITED, a Hawaii corporation;
 RICHARD COHEN, a New Hampshire
 citizen, ES3, LLC, Delaware Limited
 Liability Company, MELVIN PONCE,
 SONIA PURDY, JUSTIN FUKUMOTO,
 AFREDDA WAIOLAMA,
 JACQUELINE RIO, Hawaii citizens;
 JESSIE GONZALES, LUIZ
 RODRIGUES, AL PEREZ and
 PATRICK HIRAYAMA, California
 citizens; GUIDANCE SOFTWARE,
 LLC, a California LLC; MICHAEL
 GURZI, a California citizen; ALIX
 PARTNERS, LLC a Delaware LLC;
 DOE INDIVIDUALS 2-350; DOE
 PARTNERSHIPS, CORPORATIONS
 and OTHER DOE ENTITIES 2-20,
 Defendants.

Trial Date: September 20, 2005
 Judge: Susan Oki Mollway

FLEMING COMPANIES, INC., C&S LOGISTICS OF HAWAII, LLC,
 C&S WHOLESALE GROCERS, INC., and C&S ACQUISITIONS, LLC'S
 AMENDED ANSWER TO SECOND AMENDED COMPLAINT
FILED JUNE 18, 2004, FILED JULY 16, 2004

FLEMING COMPANIES, INC., C&S LOGISTICS OF HAWAII, LLC,
 C&S WHOLESALE GROCERS, INC., and C&S ACQUISITIONS, LLC,

("Answering Defendants") in answer to the claims set forth in the Second

Amended Complaint filed herein respond as follows:

FIRST DEFENSE

The Second Amended Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

1. Answering Defendants deny the allegations contained in paragraphs 21, 24, 25, 26, 27, 28, 29, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 52, 53, 55, 57, 58, 59, 60, 61, 62, 63(a) through (e), 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 83, 84, 85, 86, 87, 88, 89, 92, 93, 94, 97, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 133, 134, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149 and 150 of the Second Amended Complaint.

2. Answering Defendants lack information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 5, 9, 10, 11, 13, 14, 20, 30, 43, 50, 51, 54, 81, 82, 102, 114 and 115 of the Second Amended Complaint and on that basis deny them.

3. The allegations contained in paragraph 6 of the Second Amended Complaint are denied, except Answering Defendants admit that C&S Logistics is a Delaware limited liability company registered to do business in Hawaii.

4. The allegations contained in paragraph 7 of the Second Amended Complaint are denied, except to admit that C&S Wholesale Grocers, Inc. is a Vermont corporation whose affiliates purchased certain assets from Fleming Companies, Inc. ("Fleming").

5. The allegations contained in paragraph 8 of the Second Amended Complaint are denied, except to admit that C&S Acquisition, LLC is a Delaware limited liability company whose affiliates purchased certain assets from Fleming.

6. The allegations contained in paragraph 12 of the Second Amended Complaint are denied except to admit that Fleming is an Oklahoma corporation and registered to do business in the State of Hawaii and is presently the debtor in a pending Delaware bankruptcy case.

7. The allegations contained in paragraphs 15 and 16 of the Second Amended Complaint are denied except to admit that Mark Dillon ("Dillon") and Brian Christensen reside in the State of Hawaii.

8. The allegations contained in paragraph 17 of the Second Amended Complaint are denied except to admit that ES3 is located in New Hampshire.

9. The allegations of paragraph 18 of the Second Amended Complaint are denied except to admit that Richard Cohen is a citizen of the State of New Hampshire.

10. The allegations of paragraph 19 are denied except to admit that Melvin Ponce, Sonia Purdy, Justin Fukumoto, Alfreda Waiolama, and Jacqueline Rio are Hawaii citizens.

11. The Answering Defendants deny the allegations contained in paragraph 22 of the Second Amended Complaint, which, in any case, are improper under the Federal Rules of Civil Procedure: "As a general rule, the use of Doe defendants to identify a defendant is not favored." *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). "In the federal courts, John Doe casts no magical spell on a complaint [as] there is no provision in the Federal Statutes or Federal Rules of Civil Procedure for use of fictitious parties." *Fifty Assocs. v. Prudential Ins. Co. of Am.*, 446 F.2d 1187, 1191 (9th Cir. 1970).

12. The allegations of paragraph 23 of the Second Amended Complaint are denied except to admit that Wayne F. Berry may be a domiciliary of the United States.

13. The allegations of paragraph 33 of the Second Amended Complaint are denied except to admit that Freight Control System contains database tables, queries, screens and macros.

14. The allegations contained in paragraph 56 of the Second Amended Complaint are denied except to admit that on March 6, 2003, a jury found that Fleming "has a license" to use the software Berry created but that Fleming made unauthorized changes and awarded Mr. Berry \$98,250 in statutory damages for those unauthorized changes. Post-trial motions were pending when Fleming's bankruptcy petition was filed on April 1, 2003. Accordingly, no judgment was ever entered on the verdict.

15. The allegations of paragraph 90 of the Second Amended Complaint are denied, except to admit that Alix Partners LLC has been employed by Fleming in connection with its bankruptcy and that Gleacher Partners, LLC was formerly employed by Fleming.

16. The allegations of paragraph 91 are denied except to admit that Fleming hired Guidance software to remove from Fleming's computers all software created by Wayne Berry.

17. In response to the allegations contained in paragraph 95 of the Second Amended Complaint, Answering Defendants admit that plaintiff is prohibited from pursuing claims for the period prior to April 1, 2004 and deny all other allegations contained therein.

18. The allegations contained in Paragraph 135 of the Second Amended Complaint are denied, except to admit that in March 2003, the jury found that

Fleming has a license to use the database created by Wayne Berry but that Fleming had made unauthorized changes to it.

19. In response to the allegations contained in paragraph 96, Answering Defendants incorporate by reference the responses hereinabove to paragraphs 1 through 95 of the Second Amended Complaint.

20. In response to the allegations contained in paragraph 113, Answering Defendants incorporate by reference the responses hereinabove to paragraphs 1 through 112 of the Second Amended Complaint.

21. In response to the allegations contained in paragraph 132, Answering Defendants incorporate by reference all of the responses hereinabove to paragraphs 1 through 132 of the Second Amended Complaint.

22. All allegations not specifically addressed above are denied.

THIRD DEFENSE

Fleming gives notice that it intends to rely on the defense that the conduct complained of is expressly authorized by the license signed by the Plaintiff.

FOURTH DEFENSE

The claims in the Second Amended Complaint are barred by the defense of failure of consideration.

FIFTH DEFENSE

The claims in the Second Amended Complaint are barred by the defense of fraud.

SIXTH DEFENSE

The claims in the Second Amended Complaint are barred by the defenses of waiver, estoppel, and laches.

SEVENTH DEFENSE

The claims in the Second Amended Complaint are barred by the defense of unclean hands.

EIGHTH DEFENSE

The Plaintiff is not the owner of the copyrights in the software referred to in the Second Amended Complaint.

NINTH DEFENSE

The copyright registrations referred to in the Second Amended Complaint were improperly registered.

TENTH DEFENSE

If Answering Defendants have infringed, they did so with innocent intent.

ELEVENTH DEFENSE

No software used by Answering Defendants was created by Plaintiff. The software used by Answering Defendants was independently created by Fleming and/or C&S.

TWELFTH DEFENSE

Plaintiff has failed to demonstrate compliance with the requirements of a civil action under the RICO statute.

THIRTEENTH DEFENSE


Defendants' alleged conduct constitutes fair use.

WHEREFORE, Answering Defendants Pray as follows:

1. That all claims in the Second Amended Complaint be dismissed with prejudice.
2. That Answering Defendants be awarded their attorneys' fees and costs incurred herein.
3. That the Court award such further relief as is just and proper under the circumstances.

DATED: Honolulu, Hawaii, August 5, 2004.

KOBAYASHI, SUGITA & GODA



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FLEMING COMPANIES, INC.,
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C&S WHOLESALE GROCERS, INC.,
and C&S ACQUISITIONS, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;)	CIVIL NO. CV03-00385 SOMLEK
)	(Copyright)
Plaintiff,)	
)	CERTIFICATE OF SERVICE
vs.)	
)	
HAWAIIAN EXPRESS SERVICE,)	
INC., a California corporation; H.E.S.)	
TRANSPORTATION SERVICES, INC.,)	
a California corporation; CALIFORNIA)	
PACIFIC CONSOLIDATORS, INC., a)	
California corporation; JEFFREY P.)	
GRAHAM and PETER SCHAUL,)	
California citizens; MARK DILLON and)	
TERESA NOA, BRIAN)	
CHRISTENSEN, Hawaii citizens;)	
FLEMING COMPANIES, INC., an)	
Oklahoma corporation; C&S)	
LOGISTICS OF HAWAII, LLC, a)	
Delaware LLC; C&S WHOLESALE)	
GROCERS, INC., a Vermont)	
corporation; C&S ACQUISITIONS,)	
LLC; FOODLAND SUPER MARKET,)	Trial Date: September 20, 2005
LIMITED, a Hawaii corporation;)	Judge: Susan Oki Mollway
HAWAII TRANSFER COMPANY,)	
LIMITED, a Hawaii corporation;)	
RICHARD COHEN, a New Hampshire)	
citizen, ES3, LLC, Delaware Limited)	
Liability Company, MELVIN PONCE,)	
SONIA PURDY, JUSTIN FUKUMOTO,)	
AFREDDA WAIOLAMA,)	
JACQUELINE RIO, Hawaii citizens;)	
JESSIE GONZALES, LUIZ)	
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(CAPTION CONTINUED))	

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LLC, a California LLC; MICHAEL)
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PARTNERS, LLC a Delaware LLC;)
DOE INDIVIDUALS 2-350; DOE)
PARTNERSHIPS, CORPORATIONS)
and OTHER DOE ENTITIES 2-20,)
)
Defendants.)
_____)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the above-referenced document was duly served upon the following individuals by hand delivery or United States Post Office, postage prepaid, at their last known address below:

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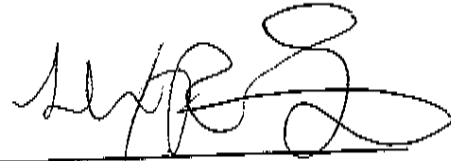
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